Applicant :	Robert B. Dopp et al.	Art Unit :	1745
Serial No. :	10/817,557	Examiner :	Monique M. Wills
Filed :	April 2, 2004		
For :	Air Cell with Improved Leakage Resistance		

REMARKS

Claims 1-54 remain in the application. Claims 1-7, 11, 13, 14, 16, 18-45 and 48-54 were elected with traverse. Non-elected claims 15, 17, 46 and 47 have been withdrawn from consideration as being drawn to a nonelected species, there being no allowable generic or linking claim. Reconsideration of the application is respectfully requested.

In the paper submitted on July 23, 2007, Applicant elected Claims 1-7, 11, 13, 14, 16, 18-45 and 48-54 were elected with traverse because claims 1, 39 and 54 are generic. In the Office action dated October 2, 2007, the Examiner acknowledged that claims 1, 39 and 54 are generic but withdrew claims 15, 17, 46 and 47 from further consideration and made the restriction final because the generic claims are not allowable. Applicant disagrees that claims 1, 39 and 54 are not generic for the reasons set forth below and requests that all withdrawn claims be rejoined upon finding generic claims to be allowable. Any non-elected claims finally found to have no allowable generic or linking claim will be cancelled.

In the Office action mailed October 2, 2007, claims 1-14, 16, 18-45 and 48-54 were rejected under 35 USC §112, first paragraph, as failing to comply with the enablement requirement because the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 39 and 54 describe a transformable component capable of transforming into an electrolyte sealing component, such as by swelling and moving towards the bottom of the can. The Examiner asserted that it is unclear as to how the air cell functions when the material transforms because the sealing component, which is disposed between the housing wall and oxygen reduction electrode, would seal the openings of the air inlet, since when the air inlet is blocked, the battery cell cannot generate electricity.

Applicant believes that the application does comply with the enablement requirement of 35 USC §112, first paragraph. As disclosed on page 4, lines 24-26, an object of the invention is to provide a cell with an oxygen reduction electrode having improved resistance to electrolyte leakage, as well as a high discharge capacity and good high rate discharge characteristics. Under

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normal conditions, the cell can generate electricity before the transformable component transforms, as demonstrated in Example 5. For example, Lot 7 showed little or no loss in capacity compared to a control lot that did not contain a transformable component according to the invention. However, under abnormal conditions (e.g., in the presence of manufacturing defects, upon failure or an internal seal, or where there is excessive internal pressure - page 2, lines 24-26), the transformable member can transform to reduce or prevent leakage, and may change the properties of the leakage, such as by neutralization, to mitigate its effects. Under these abnormal conditions it is more important for leakage to be at least reduced or its effects mitigated than for the cell to continue to generate electricity, and loss of power can be a much more acceptable alternative than personal injury (e.g., due to a chemical burn) or damage to a piece of equipment whose cost can be orders of magnitude greater than the cost of the replaceable battery cell.

For the above reasons, Applicant believes that the enablement requirements of 35 USC §112, first paragraph, are met by the specification, and 1-14, 16, 18-45 and 48-54 are allowable. Because generic claims 1, 39 and 54 are allowable, rejoinder of withdrawn claims 15, 17, 46 and 47 and allowance of claims 1-54 is requested.

Respectfully submitted,

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